MUNICIPAL CORPORATIONS — APPOINTMENT TO OFFICE — APPROVAL — RECONSIDERATION. — A statute provided that the members of the Board of Education were to be appointed by the mayor, with the approval of the city council. Pursuant to this provision the mayor appointed, and the city council approved, certain persons as members. Subsequently, the city council, reconsidering its vote of approval, disapproved the appointments. *Held*, that there had been no valid appointment to office as the ordinary parliamentary rules, allowing the city council to reconsider its action, applied. *People* v. *Davis*, 120 N. E. 326 (Ill.).

An appointment to office is completed when the last act required has been performed. *State* v. *Barbour*, 53 Conn. 76, 22 Atl. 686; *Draper* v. *State*, 175 Ala. 547, 57 So. 772; *Marbury* v. *Madison*, 1 Cranch (U. S.) 137. In the principal case the last act was the approval by the city council. *People* v. *Bissel*, 49 Cal. 407. An appointment to office by whomsoever made is intrinsically an executive act, and the city council in appointing acts in an executive capacity. *State* v. *Wagner*, 170 Ind. 144, 82 N. E. 466; *State* v. *Longdon*, 68 Conn. 519, 37 Atl. 383; *Haight* v. *Love*, 39 N. J. L. 14; *Achley's Case*, 4 Abb. Pr. (N. Y.) 35; *State* v. *Barbour*, 53 Conn. 76, 22 Atl. 686. And it is submitted that approval of an appointment, though by a legislative body, being but one of the steps required for a valid appointment, is also an executive act. Accordingly, by approving the appointment the city council has exercised and exhausted its power, and the appointee is seised of the office. *In re Fitzgerald*, 88 App. Div. (N. Y.) 434, 82 N. Y. S. 811. *Contra*, *Dust* v. *Oakman*, 126 Mich. 717, 86 N. W. 151. Thus, being vested with the office, reconsideration of the approval is ineffectual, and the appointee remains seised of the office until removed by a body having the power of removal. *In re Fitzgerald*, *supra*; *Achley's Case*, *supra*; *Haight* v. *Love*, *supra*; *Marbury* v. *Madison*, 1 Cranch (U. S.) 137, 162. See 2 DILLON, MUNICIPAL CORPORATIONS, 5 ed., § 466.

MUNICIPAL CORPORATIONS — COMPENSATION FOR SPECIAL SERVICES. — The plaintiff's fire-department was summoned to prevent the outbreak of fire in defendant's acid plant, the roof of which had caved in. The immediate danger passed, defendant requested that several men be supplied to watch the premises temporarily. Plaintiff sues for compensation for the services of the fire-department and of the special watchmen. *Held*, it may recover for the latter, but not the former. *Grays Urban District Council* v. *Grays Chemical Works, Limited*, [1918] 2 K. B. 461.

For a discussion of this case, see NOTES, page 282.

MUNICIPAL CORPORATIONS — MAINTENANCE OF RAILWAY CROSSINGS — SURRENDER OF POLICE POWER. — The complainant railway, being the owner of a right of way in the city, granted to the city the right to extend a street over the complainant's tracks, in consideration of which the city agreed that a crossing should be maintained without expense to the railway company. Subsequently, the city passed an ordinance requiring the railway company to bear the expense by operating safety gates at this crossing. To a bill by the complainant which seeks to enjoin the enforcement of this ordinance, the city demurs, alleging that the contract amounts to a surrender of the city's police power and so is not binding. *Held*, that the demurrer be overruled. *Florida East Coast R. Co.* v. *City of Miami*, 79 So. 682 (Fla.).

It is well settled that a city cannot by contract limit or give up the exercise of any police power delegated to it by the state. *Jacksonville* v. *Ledwith*, 26 Fla. 163, 7 So. 885; *State* v. *Laclede Gaslight Co.*, 102 Mo. 472, 14 S. W. 974; *City of Chicago* v. *Chicago Union Traction Co.*, 199 Ill. 259, 65 N. E. 243. See 16 HARV. L. REV. 436. A common illustration of the exercise of such power is found in enactments by city legislative bodies requiring that railway com-

panies shall without compensation provide safety appliances at street crossings. *Delaware, etc. R. Co.* v. *East Orange*, 41 N. J. L. 127; *Village of Clara City* v. *Great Northern R. Co.*, 130 Minn. 480, 153 N. W. 879; *Cincinnati, I. & W. R. Co.* v. *City of Connersville*, 218 U. S. 336. See 3 ABBOTT, MUNICIPAL CORPORATIONS, § 854. If at the time in question there is a preëxisting right on the part of the city to require the railway company to maintain the crossing without compensation, an agreement by which the city gives up that right is obviously invalid. *State* v. *Great Northern R. Co.*, 134 Minn. 249, 158 N. W. 972; *Northern Pacific R. Co.* v. *Minnesota*, 208 U. S. 583. But in the principal case the city had no preëxisting right to give up. The railroad owned the land and there was no street over it. Not until the railroad granted to the city the right to open a street over its property did the city acquire any police power over the crossing. *State* v. *Chicago, St. P., M. & O. R. Co.*, 85 Minn. 416, 89 N. W. 1. Since, therefore, the contract with the railway company was not a surrender of the city's police power, the subsequent ordinance in violation thereof was null and void.

NEGLIGENCE — CHARITABLE CORPORATION — LIABILITY OF HOSPITAL TO PAY PATIENT FOR NEGLIGENCE OF ITS SERVANTS. — Plaintiff's intestate was confined in the hospital of defendant, a charitable corporation without capital stock and paying no dividends. Owing to insufficient guarding, he jumped from a window in a delirium and was killed. He paid fifteen dollars a week for his care. *Held*, that defendant was not liable for the negligence of its servants. *Mikota* v. *Sisters of Mercy*, 168 N. W. (Iowa) 219.

Where the injured person was wholly a recipient of the charity, the charitable funds are generally not chargeable with damages for the torts of servants. *Abston* v. *Waldon Academy*, 118 Tenn. 25, 102 S. W. 351. *Contra*, *Donaldson* v. *General Public Hospital*, 30 New Bruns. 279. Where the injured person paid for his care the institution is still immune. *Downes* v. *Harper Hospital*, 101 Mich. 555, 60 N. W. 42; *Thornton* v. *Franklin Square House*, 200 Mass. 465, 86 N. E. 909. *Contra*, *Mersey Docks* v. *Gibbs*, 1 H. L. 93; *Glavin* v. *Rhode Island Hospital*, 12 R. I. 411. But where the plaintiff was not a recipient of the charitable services, liability has often been imposed. *Bruce* v. *Central Methodist Episcopal Church*, 147 Mich. 230, 110 N. W. 951; *Gamble* v. *Vanderbilt University*, 138 Tenn. 616; 200 S. W. 510 (1918). In support of the rule of non-liability it is said that the trust funds must not be diverted to pay such claims. See *Fire Insurance Patrol* v. *Boyd*, 120 Pa. 624, 647, 15 Atl. 553, 557. But see 31 HARV. L. REV. 481. The cases imposing liability in favor of persons not recipients of the charity are inconsistent with this reasoning. Some courts base non-liability on an implied agreement not to hold the institution liable. See *Powers* v. *Mass. Homeopathic Hospital*, 109 Fed. 294, 303. This seems fictitious, especially where the patient pays. The question turns upon the policy behind the rule of *respondeat superior*. It is said that one who employs another to do an act for his benefit should bear the risk of injury therefrom to third persons. See *Hall* v. *Smith*, 2 Bing. 156, 160; *Hearns* v. *Waterbury Hospital*, 66 Conn. 93, 125, 33 Atl. 595, 604. But "benefit" here should mean the furtherance of an enterprise in which one is engaged. A strong additional reason lies in the need of liability in order to secure careful management. See 31 HARV. L. REV. 482. Charitable institutions form no exception.

NEGLIGENCE — PROXIMATE CAUSATION — THE INTERVENTION OF AN ILLEGAL ACT — THE *LUSITANIA*. — The British passenger-carrying merchantman, *Lusitania*, sailed from New York for Liverpool with the knowledge that Germany had declared a submarine blockade of the waters surrounding England and Ireland. While at sea numerous wireless advices were received from the British Admiralty as to the activities and location of submarines,